IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of:	)	
	)	
CINDY SUE HONEYCUTT,	)	2 CA-CV 2006-0172
	)	DEPARTMENT A
Petitioner/Appellee,	)	
	)	MEMORANDUM DECISION
and	)	Not for Publication
	)	Rule 28, Rules of Civil
ROBERT DEXTER JOHNSON,	)	Appellate Procedure
	)	
Respondent/Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. DO98023426

Honorable Janna L. Vanderpool, Judge

AFFIRMED

Cole, Massey, Finley & Leal
By A. Thomas Cole — Casa Grande
Attorneys for Petitioner/Appellee

Robert Dexter Johnson — Tempe
In Propria Persona

V Á S Q U E Z, Judge.

¶1 This is the second appeal filed in this dissolution action by appellant Robert Dexter Johnson, who once again challenges the trial court's order increasing his monthly child support obligation. In the first appeal, we remanded the case for the trial court to explain "why it attributed the income it did to Johnson," as required by § 22 of the Arizona Child Support Guidelines, A.R.S. § 25-320 app. *Honeycutt v. Johnson*, No. 2 CA-CV 2005-0143, ¶ 8 (memorandum decision filed Apr. 21, 2006). Because we are satisfied that the trial court's explanation complies with the Guidelines, we affirm.

Facts and Procedural Background

¶2 The detailed facts of this case are set out in our previous decision. We merely highlight the facts pertinent to this appeal. Robert Johnson and appellee Cindy Honeycutt were divorced in 1993. The dissolution decree awarded Honeycutt permanent sole custody of the parties' children and ordered Johnson to pay $279 each month in child support. In September 1995, Johnson sought modification of the custody order, and in October 2001, Honeycutt petitioned to modify child support. Protracted litigation followed, and after a custody hearing in June 2004, the trial court continued sole custody of the children in Honeycutt and granted Johnson visitation with his son, but denied him visitation with his daughter. In January 2005, the trial court increased Johnson's child support obligation to $1,227.87 per month and assessed him $29,468.88 in support arrearages.

¶3 Johnson appealed from the trial court's order increasing his monthly support obligation, assessing support arrearages, and denying him visitation with his daughter. We affirmed the trial court's ruling that Honeycutt had demonstrated the requisite "substantial

and continuing" change in circumstances to justify modifying child support under A.R.S. § 25-327. We further found that the trial court properly considered the factors enumerated in the child support statute, § 25-320, in determining the increased payment amount and concluded that the trial court's assessment of support arrearages was appropriate. However, we remanded the case for the trial court to address two issues: first, to explain why it had attributed income above the minimum wage to Johnson, to comply with the requirements of § 22 of the Child Support Guidelines, § 25-320 app.,[1] and second, to comply with A.R.S. § 25-408(A), which requires a trial court to find that visitation would "endanger seriously the child's physical, mental, moral or emotional health" before denying a parent visitation rights.

¶4 On remand, the trial court entered findings on both issues. In this appeal, Johnson challenges only the trial court's order increasing his child support obligation.[2]

Discussion

Motion to Dismiss Appeal

¶5 As a preliminary matter, we consider Honeycutt's "motion to dismiss appeal for contempt" contained in her answering brief. She argues the appeal should be dismissed

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[1]We note that the current version of the Arizona Child Support Guidelines applies to orders entered after December 31, 2004. A.R.S. § 25-320 app. The order modifying child support at issue here was entered in January 2005. Therefore, the current Guidelines are applicable.

[2]Honeycutt argues that the trial court's additional findings regarding its denial of visitation comply with A.R.S. § 25-408(A). However, because Johnson does not raise this issue on appeal, we do not address it.

because Johnson failed to comply with various trial court orders, relying on *Czarnecki v. Czarnecki*, 123 Ariz. 478, 600 P.2d 1110 (App. 1978), *aff'd*, 123 Ariz. 466, 600 P.2d 1098 (1979), to support her assertion that "[d]ismissal is appropriate." But, in *Czarnecki*, we denied the appellee's motion to dismiss the appeal because of the appellant's failure to designate the complete record, in part, because the motion had not been made separately from the answering brief. *Id*. at 482, 600 P.2d at 1114; *see also* Ariz. R. Civ. App. P. 6, 17B A.R.S. (setting forth procedure for filing motions in appellate court). And, in any event, *Czarnecki* does not support Honeycutt's implicit argument that an appeal may be dismissed as a contempt sanction for violating trial court orders.

¶6 It was for the trial court to determine whether Johnson had violated its orders in the first instance. If the trial court had made such a determination, it was also within that court's discretion to impose an appropriate contempt sanction. *See Hays v. Gama*, 205 Ariz. 99, ¶¶ 19-20, 67 P.3d 695, 699 (2003); *see also Payne v. Payne*, 12 Ariz. App. 434, 435, 471 P.2d 319, 320 (1970) (appellate court does not consider matters raised for first time on appeal); A.R.S. § 12-120.21 (appellate court is court of limited jurisdiction). Accordingly, we deny Honeycutt's motion to dismiss the appeal.

Child Support Order

¶7 In our previous decision, we affirmed the trial court's findings that circumstances had changed and its consideration of all relevant factors in modifying the amount of support. *See* §§ 25-320(D), 25-327(A). What we found lacking was any

explanation for why the trial court attributed to Johnson an income higher than the minimum wage. *See* § 25-320 app. § 22.

¶8 Johnson argues the trial court's order is still not in compliance with § 25-320 app. § 22 because the trial court made no determination of his gross income and "[n]o findings of fact were made by [the] trial court to support its determinations." He also claims the trial court abused its discretion in ordering the increased amount, asserting he cannot afford to pay it. We review a trial court's decision to modify a child support award for an abuse of discretion. *Little v. Little*, 193 Ariz. 518, ¶ 5, 975 P.2d 108, 110 (1999).

¶9 Contrary to Johnson's assertion, the trial court made a finding on his gross income. Section 25-320 app. § 22 states in part:

> The court shall make findings in the record as to: Gross Income, Adjusted Gross Income, Basic Child Support Obligation, Total Child Support Obligation, each parent's proportionate share of the child support obligation, and the child support order.
>
> The findings may be made by incorporating a worksheet containing this information into the file.

The child support worksheet filed in this case specifically attributes $8,333.00 gross income to Johnson and includes the other required figures. And the trial court's order awarding child support reflects its reliance on the worksheet. Thus, the trial court's order contains the required statutory finding on Johnson's gross income and is not deficient on that basis.

¶10 To the extent Johnson argues the order otherwise lacks sufficient findings of fact and explanation, this argument also fails. In addition to the figures needed to calculate child support amounts, Section 22 of the Guidelines requires that when "the court attributes

income above minimum wage income, [it] shall explain the reason for its decision." On remand, the trial court explained that "based upon testimony received at the child support hearing," it found:

> 1. . . . that Father had systematically attempted to hide assets and income from the Court for child support calculations.
>
> 2. . . . that Father's lifestyle indicated an infinitely greater income than he disclosed to the Court.
>
> 3. . . . that, based upon past employment and income, Father is capable of making at least the income which the Court attributed to him.

No further explanation is required. *See Elliott v. Elliott*, 165 Ariz. 128, 132, 796 P.2d 930, 934 (App. 1990) (noting that, to comply with rule requiring trial court to make finding of fact upon request, a court's award of child support must be accompanied by sufficient information to "inform an appellate court of the basis for the trial court's decision"). The trial court provided the requisite information to inform us of the basis for its decision and complied with Section 22 of the Guidelines. *See id.*

¶11 Johnson next argues that the trial court abused its discretion in ordering him to pay $1,227.87 per month, claiming he cannot afford to pay that amount. He asserts that his average monthly income is only $1,000 and his living expenses total $999. He refers to his affidavit of financial information and federal income tax returns to support this contention. The affidavit and returns were among the evidence presented at the hearings giving rise to the first appeal. Nonetheless, after hearing from witnesses and receiving in evidence numerous exhibits related to Johnson's financial status, the trial court attributed

$8,333.00 income per month to Johnson and explained that it did so because it believed he was attempting to hide his assets from the court and was capable of earning "at least" that amount of income each month.

¶12 As we noted in the first appeal, because Johnson did not provide this court a transcript of the child support hearing, we must assume that the evidence presented at the hearing supports the trial court's ruling and that the court properly considered all relevant factors. *See Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995).

¶13 Many of the exhibits introduced at the hearings support the inference that Johnson was attempting to disguise his assets.[3] And Johnson's apparent claims that he should be the custodial parent because he could give his children advantages beyond what Honeycutt could also influenced the trial court's decision. After the June 2004 custody hearing, the trial court concluded:

> This Court is particularly unimpressed by the assertion of [Johnson] that because of his financial resources and his ability to introduce his children to social and educational advantages he should be the custodial parent of these children. This assertion comes adamantly from [Johnson], even though [he] has historically paid a pittance in child support, and maintains that he is without funds to pay more. To label this offensive position as disingenuous is an understatement.

¶14 As we stated in the first appeal, on the record before us, we assume the evidence supports the trial court's ruling and that the court properly considered the requisite factors. *See Baker*, 183 Ariz. at 73, 900 P.2d at 767. We do not reweigh the evidence,

[3]Although the transcript has not been provided, we do have the list of exhibits admitted at the hearings as well as the exhibits themselves.

Gerow v. Covill, 192 Ariz. 9, ¶ 24, 960 P.2d 55, 61 (App. 1998), and we did not order the trial court to do so on remand. *See Anderson v. Contes*, 212 Ariz. 122, ¶ 10, 128 P.3d 239, 242 (App. 2006) ("[N]ot every case in which error is discovered on appeal needs to be remanded for an entirely new trial."). We cannot say the trial court abused its discretion in ordering Johnson to pay $1,277.87 per month in child support.

¶15 For the reasons stated above, we affirm the court's order.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge